

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.99.401, 8.99.404, 8.99.501,) PROPOSED AMENDMENT
8.99.502, 8.99.504, 8.99.505,)
8.99.509, and 8.99.511 pertaining to)
microbusinesses)

TO: All Concerned Persons

1. On November 29, 2007, at 1:00 p.m, the Department of Commerce will hold a public hearing in Room 226 at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Quinn Ness, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2758; TDD (406) 841-2702; fax (406) 841-2731; or e-mail quiness@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.99.401 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same but is renumbered (20).

(1) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(2) remains the same but is renumbered (4).

(3) (17) "Microbusiness" means a legal for profit or nonprofit Montana business with fewer than ten full-time equivalent employees and annual gross revenues of less than \$500,000 \$1,000,000.

(4) (18) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state of Montana to provide management training, technical assistance, and access to capital for the startup or expansion of microbusinesses. Microbusiness development corporations are certified by the department to provide management training, technical assistance, and loans to microbusinesses, as provided in 17-6-408, MCA. Microbusiness development corporations may apply for and, if approved by the department, be awarded a development loan for establishing a revolving loan fund from which loans are made directly by the certified microbusiness development corporation to

microbusinesses, or loans made directly by banks to qualified microbusinesses are guaranteed by the microbusiness development corporation.

(5) remains the same but is renumbered (16).

(5) "Deposit account" means a demand, checking, time, savings, or passbook account maintained with a federally insured bank.

(6) remains the same but is renumbered (21).

(7) "Development loan funds" means the cash proceeds of a development loan and the portion of the revolving loan fund directly provided by the development loan.

(7) (8) "Direct loan program" means a program in which makes direct loans to microbusinesses. a certified MBDC uses development loan funds for establishing a revolving loan fund from which loans are made directly by the certified MBDC to microbusinesses under the provisions of 17-6-401, MCA, et seq.

(8) (14) "Loan guarantee program" means a program with development loan funds on deposit with a lending institution as guarantee against loss for loans which that institution makes directly to microbusinesses which have been screened, trained and/or counseled and qualified by the MBDC in which a certified MBDC uses development loan funds for establishing a revolving loan fund from which loans made directly by banks to qualified microbusinesses are guaranteed under the provisions of 17-6-401, MCA, et seq.

(9) remains the same but is renumbered (2).

(9) "Federally insured bank" means a bank that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(40) (6) "Development loan" means money loaned to a certified MBDC by the department for the purpose of making microbusiness loans establishing a revolving loan fund from which loans are made directly to microbusinesses, or loans made directly by banks to qualified microbusinesses are guaranteed under the provisions of 17-6-401, MCA, et seq.

(11) remains the same but is renumbered (10).

(11) "Funded loan loss reserve" means cash reserved for the purpose of self-insuring the MBDC for the cost of loan losses. The funded loan loss reserve shall only be used for covering the cost of loan losses when a loan is charged off. After a loan is charged off, all loan funds recovered by the MBDC shall be credited and deposited to the funded loan loss reserve and revolving loan fund bank account. The funded loan loss reserve (cash) is held in the revolving loan fund bank account and is not available for lending to microbusinesses or for payment of revolving loan fund operating expenses. Funded loan loss reserve cash may be generated from revolving loan fund income.

(12) remains the same but is renumbered (29).

(12) "Investment bank account" means the deposit account in which department development loan funds, MBDC matching loan funds, and funded loan loss reserve funds may be deposited or transferred to, from the revolving loan fund bank account, for the sole purpose of generating investment income on idle revolving loan fund assets. The investment bank account is a time deposit account maintained with a federally insured bank.

(13) remains the same but is renumbered (28).

(14) remains the same but is renumbered (22).

(15) remains the same but is renumbered (3).

~~(46)~~ (15) "Management training" means business-related training in a group setting performed for the benefit of microbusinesses and their principals.

~~(47)~~ (27) "Technical assistance" means business-related consultation in a one-to-one setting performed for the benefit of microbusinesses and their principals.

(18) remains the same but is renumbered (13).

(19) remains the same but is renumbered (26).

(19) "Principals" means members, officers, directors, and other individuals directly involved in the operation and management (including setting policy) of a legal entity.

(23) "Revolving loan fund" means all assets obtained through or related to a department development loan and MBDC matching loan funds that are recorded by the MBDC in a separate accounting ledger and which are accounted for along with related liabilities, revenues, and expenses, separate from the MBDC's other assets and financial activities.

(24) "Revolving loan fund bank account" means the deposit account in which revolving loan fund assets that are obtained through or related to a department development loan, MBDC matching loan funds, and the income earned or derived from the operation of the revolving loan fund are deposited by the MBDC.

(25) "Revolving loan fund income" means the proceeds from interest, fees, and any other income earned or derived from the operation of the revolving loan fund.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-408, MCA

REASON: It is necessary for the department to amend ARM 8.99.401 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-402, 17-6-403, 17-6-406, 17-6-407, and 17-6-408, MCA. In addition, the amendment to section (3) clarifies the eligibility of nonprofit businesses, as requested by the MBDCs. It should be noted that the amendments provide for the definition, description, and/or clarification of the amendments to ARM 8.99.504. Finally, the amendments clarify the requirements and procedures for securing department development loans as required by 17-6-406 and 17-6-407, MCA, and Article 9 of the Uniform Commercial Code (UCC).

The 1998 revisions to Article 9 of the UCC, now in effect in Montana (2001) and every state in the United States and the District of Columbia, brought within the scope of Article 9 for the first time, security interests in deposit accounts as original collateral. Security interests in deposit accounts as original collateral in commercial transactions are today being granted using the provisions of Article 9 as setting forth the rules governing the attachment, perfection, priority, and enforcement of the security interests.

Control of a deposit account under Article 9 is achieved in one of three ways. Two are very straightforward. Under one method, if the secured party is the depository bank, the secured party automatically has control. Under a second method, if the

secured party is the depository bank's customer with respect to the deposit account, the secured party has control. There is also a third method for a secured party to achieve control. Under that method, the debtor, the secured party, and the depository bank must have "agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing the disposition of the funds in the deposit account without further consent of the debtor". Accordingly, when the secured party is not the depository bank and it is not desirable or practical for the secured party to become the bank's customer with respect to the deposit account, the secured party must, to have control over the deposit account, obtain a tripartite agreement in a signed writing or other authenticated record that the depository bank will follow the secured party's instructions directing the disposition of the funds in the deposit account without the debtor's further consent. This tripartite agreement is commonly referred to as a "deposit account control agreement". Therefore, the most practical method for the department to perfect its lien as directed by 17-6-407, MCA, and Article 9 of the UCC is for the department to require revolving loan fund and investment deposit accounts and corresponding account control agreements.

Therefore, there is reasonable necessity to amend ARM 8.99.401 to clarify and implement the requirements, processes, and procedures for establishing and maintaining the required deposit accounts and corresponding account control agreements to perfect the department's lien as directed by 17-6-406 and 17-6-407, MCA, and Article 9 of the UCC.

8.99.404 CERTIFICATION OF MICROBUSINESS DEVELOPMENT CORPORATIONS

(1) through (1)(f) remain the same.

(g) Evidence of sufficient operating income- generated from the proposed revolving loan fund and/or provided from other income sources of the applicant to ensure the successful operation and management of the revolving loan fund.

(h) through (4) remain the same.

AUTH: 17-6-406, MCA

IMP: 17-6-408, MCA

REASON: It is necessary for the department to amend ARM 8.99.404 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406, 17-6-407, and 17-6-408, MCA.

8.99.501 DEVELOPMENT LOAN - CRITERIA (1) The criteria used by the department to make development loans to a certified MBDC will include the criteria required for certification as ~~an~~ a MBDC as set forth in ARM 8.99.404 plus the following additional requirements:

(a) legally binding commitment(s) for MBDC operating income other than earned income from the revolving loan fund; and

(b) legally binding commitment(s) for MBDC matching loan funds.

(2) remains the same.

(3) The department will consider the following in determining the amount of a development loan awarded to a MBDC:

(a) financial stability and sources and sufficiency of operating income generated from the proposed revolving loan fund and/or provided from other income sources of the MBDC;

(b) remains the same.

(c) expertise and, where applicable, performance of the MBDC in the management of a revolving loan fund; and

(d) geographic and rural-to-urban balance in distribution of program funds;

(e) the amount of nondepartment derived funds contributed to the revolving loan fund by the certified MBDC in addition to the required matching loan funds; and

(f) the feasibility of the financial projections for the revolving loan fund provided by the certified MBDC, taking into account market size and activity, historic loan volume, and financial performance of the certified MBDC.

(4) A development loan will not be extended to a certified MBDC unless:

(a) there is adequate assurance of repayment of the development loan based on the fiscal and managerial capabilities of the certified MBDC;

(b) the amount of the development loan together with the required MBDC matching loan funds and other funds available is adequate to achieve the purposes for which the development loan is made; and

(c) any delinquent debt to the federal government or the state of Montana by the MBDC is satisfied. Development loan funds may not be used to satisfy the debt.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.501 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406, 17-6-407, and 17-6-408, MCA.

In addition, new subsection (3)(e) would provide the MBDCs with the opportunity to provide more matching funds than what is required under 17-6-407, MCA, and allows the department to consider this in determining the amount of a development loan awarded to a MBDC.

8.99.502 DEVELOPMENT LOAN - APPLICATION PROCESS (1) The MBDC may apply for a development loan by submitting an application to the department on a form provided by the department. The application shall contain:

(a) a description of all outstanding ~~obligations~~ notes payable and long term debt of the MBDC including copies of all notes and contracts payable and a complete description of all collateral pledged as security loan agreements, promissory notes, and security agreements for said notes and contracts long term debts;

(b) through (3) remain the same.

(4) Certified MBDCs that have an outstanding development loan principal balance may apply for additional development loan funds provided that:

- (a) at least 80 percent of the certified MBDC's total outstanding principal balance of the development loan is currently loaned out to eligible microbusinesses;
- (b) the outstanding microbusiness loan receivables of the certified MBDC's revolving loan fund are generally sound; and
- (c) the MBDC is in compliance with all applicable statutes, administrative rules, and loan agreements with the department.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.502 in order to clarify the development loan application process and requirements and to maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA.

8.99.504 DEVELOPMENT LOAN - TERMS (1) Development loans shall be renewable at intervals of no more than four years. If the department requires or agrees to restructure a development loan to expedite the repayment of the loan, the term of the restructured loan shall provide for the repayment of the restructured loan in an efficient and prudent manner and shall not exceed eight years.

(2) Development loans shall require, at a minimum, the payment of interest on a quarterly basis.

~~(2)~~ (3) The loan agreement shall require that the MBDC provide ~~classroom management~~ training, and pre-loan and post-loan consulting and technical assistance as described in the MBDCs application for certification.

(3) remains the same, but is renumbered (4).

~~(4)~~ (5) The loan agreement will require fidelity bonding of all MBDC employees having access to development loan funds: as follows:

(a) a fidelity blanket position bond insuring the MBDC in an amount equal to or greater than the total outstanding indebtedness of the MBDC that has been issued by the department to the MBDC under the authority of the Microbusiness Development Act is acceptable to the department in meeting the fidelity bond requirement. "Fidelity blanket position bond" refers to a fidelity bond where blanket coverage is granted for all employees in the regular service of the MBDC during the term of the bond. The bond is issued for a fixed sum and each employee of the MBDC is covered up to the full amount of the bond.

(6) The initial department development loan to a certified MBDC shall not exceed the maximum amount the certified MBDC can reasonably be expected to lend to eligible microbusinesses, in an effective and sound manner, within two years after loan closing. After two years from the closing of the initial development loan, at least 70 percent of the total principal balance of the certified MBDC's development loan shall be loaned out to eligible microbusinesses. The loan out rate shall be calculated as follows: total revolving loan fund microbusiness loan receivables multiplied by .86, divided by the total development loan principal balance outstanding.

(7) On a quarterly basis, all MBDCs shall report, in writing, the total revolving loan fund microbusiness loan receivables and the resulting loan out rate to the

department. If the reported loan out rate falls below the 70 percent loan out rate standard for a 12 month period, the MBDC shall return the excess funds to the department by the fifth day following the end of the next calendar year quarter. The dollar amount of development loan funds equivalent to the difference between the actual percentage of development loan funds loaned out and the 70 percent loan out rate standard is referred to as "excess funds". If excess funds are returned by the MBDC to the department, a certified MBDC may apply for additional development loan funds in the future, provided that the certified MBDC meets the requirements established in ARM 8.99.502.

(8) All development loan funds received by a MBDC and all MBDC matching loan funds are assets of the revolving loan fund. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund. The MBDC may transfer additional assets into the revolving loan fund. The receivables created by making loans to eligible microbusinesses, the MBDC's security interest in collateral pledged by microbusinesses, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the revolving loan fund are assets of the revolving loan fund.

(9) The portion of the revolving loan fund that consists of development loan funds shall only be used for making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that consists of MBDC matching loan funds shall only be used for securing the development loan and/or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that includes revolving loan fund income may be used for development loan debt service, reasonable revolving loan fund administrative costs approved by the department, funded loan loss reserves, or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq.

(10) The MBDC shall submit a budget to the department which forecasts revolving loan fund income and expenses. The amount removed from the revolving loan fund shall not exceed the amount in the MBDC's budget that is approved by the department. Revolving loan fund income may be used to create and maintain a funded loan loss reserve. The MBDC shall create and maintain a funded loan loss reserve that is equal to six percent of the total outstanding microbusiness loan receivables. The funded loan loss reserve may be accumulated over the initial two years of the development loan. The funded loan loss reserve shall be maintained for as long as any part of a development loan to a MBDC remains unpaid. The department in consideration of, but not limited to, MBDC audits and loan loss and delinquency records may require additional revolving loan fund income be used for increasing the funded loan loss reserve.

(11) The MBDCs shall follow generally accepted accounting principles (GAAP) to identify and record revolving loan fund assets and to prepare, present, and report revolving loan fund financial statements (balance sheet and income statement) as follows:

(a) the MBDC shall maintain a separate accounting ledger for the revolving loan fund;

(b) each MBDC shall provide the department with a copy of an annual organization wide audit that is prepared by an independent certified public accountant that is licensed by the state of Montana; and

(c) the department shall procure the services and direct the activities of an independent certified public accountant that is licensed by the state of Montana to prepare an annual audit of each MBDC, which includes the verification of each MBDC's compliance with all the requirements specific to the microbusiness finance program.

(12) All department development loan funds, MBDC matching loan funds, and all proceeds from interest, fees, and any other income earned or derived from the operation of the revolving loan fund shall be deposited in the revolving loan fund bank account. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund bank account as follows:

(a) the revolving loan fund bank account is a separate demand deposit account in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money;

(b) all development loan funds, MBDC matching loan funds, and all revolving loan fund income shall be deposited into the revolving loan fund bank account;

(c) the MBDC may transfer additional cash into the revolving loan fund bank account;

(d) loans to eligible microbusinesses are advanced from the revolving loan fund bank account; and

(e) all revolving loan fund expenses that are approved by the department are paid from the revolving loan fund bank account.

(13) Department development loan funds, MBDC matching loan funds, and funded loan loss reserve funds may be transferred to the investment bank account from the revolving loan fund bank account. The investment bank account is a separate time deposit account, which pays interest for a fixed term not to exceed one year, in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money. The investment bank account does not include accounts that are evidenced by a certificated instrument. All interest earnings generated from the investment account shall be deposited in the investment account. All withdrawals or transfers from the investment bank account shall be deposited in or transferred to the revolving loan fund bank account.

(14) Security for all development loans to MBDCs shall be sufficient to ensure repayment of the development loan. The MBDC's operating income, financial condition, and management ability will also be considered. The certified MBDC shall execute a promissory note, development loan agreement, and security agreement with the department. Security for all development loans to MBDCs shall include, but shall not be limited to, a pledge by the MBDC of all assets now in or hereafter placed in the revolving loan fund. The MBDC shall covenant that, in the event the MBDC's financial condition deteriorates or the MBDC takes action detrimental to prudent revolving loan fund operation or fails to take action required of

a prudent lender, as determined by the department, the MBDC shall provide additional security, execute any additional documents, and undertake any reasonable acts the department may request to protect the department's interest. In addition to normal security documents, a first lien interest in the MBDC's revolving loan fund bank account and investment bank account shall be accomplished by control agreements satisfactory to the department. The control agreement does not have to require department signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the bank account to the department and subordinate any liens it may have against the MBDC bank account.

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.504 in order to clarify the development loan terms and the requirements and procedures for accounting, auditing, and securing department development loans as required by 17-6-406 and 17-6-407, MCA, and Article 9 of the UCC and to maintain consistency with the intent of the Microbusiness Development Act. Finally, it should be noted that the MBDCs requested the amendment which provides for the use of a "fidelity blanket position bond" in satisfying the program's fidelity bond requirements.

8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS

(1) MBDC Matching loan funds, in the ratio of at least \$1 from the MBDC for each \$6 of development loan funds provided by the department, must be provided in cash.

(2) ~~The development loan agreement between the department and a MBDC must specify account(s), or type of account(s), into which full amount of the MBDC's cash matching funds must be deposited in the revolving loan fund bank account before the development loan proceeds are deposited by the department in revolving loan fund bank account, may be disbursed to the MBDC, except that, when the MBDC presents a legally binding commitment for cash matching funds from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that committed federal portion of the cash matching funds.~~

(3) remains the same

(4) All development loan and MBDC matching loan funds not invested in microbusiness loans must be deposited and maintained in: the revolving loan fund bank account or the investment bank account at all times.

~~(a) direct obligations of, or obligations guaranteed as to principal and interest by, the United States which mature within 15 months from the date of investment; or~~

~~(b) repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by the United States. The securities must be maintained in a custodial account at a federally insured institution; or~~

~~(c) certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or~~

- ~~(d) deposit account in a federally insured institution; or~~
- ~~(e) a checking account in a federally insured institution; or~~
- ~~(f) a reasonable petty cash fund.~~
- ~~(g) deposit of funds in excess of the insured amount is allowed only if the institution meets the definition of "well-capitalized" in accordance with the regulations of the federal deposit insurance corporation.~~
- ~~(5) All and all receivables held by MBDCs pursuant to the authority of the Microbusiness Development Act in cash, cash deposits or investments other than microbusiness loans or guarantee funds must be pledged as collateral to secure the development loan.~~
- ~~(6) A MBDC must provide the department with senior security interest in the full amount of all microbusiness loans made from development loan and matching funds.~~
- ~~(7) (5) In the case that proceeds from a development loan are used to establish a revolving loan fund, from which loans are made directly to microbusinesses, MBDC matching loan funds must be deposited, invested, and lent together with the development loan proceeds, in the ratio of at least \$1 from the MBDC for each \$6 of development loan funds provided by the department, and must be used for only those purposes for which the development loan fund proceeds are used, as defined in 17-6-407(5), MCA.~~
- ~~(8) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, matching loan funds must be allocated between the guarantee fund and the revolving loan fund in the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.~~
- ~~(9) (6) In the case that proceeds from a All development loan proceeds shall be are used in whole or in part to establish a guarantee revolving loan fund, with which the MBDC guarantees loans made by financial institutions to microbusinesses, the following additional requirements apply: from which loans made directly by the MBDC to microbusinesses and/or loans made directly by banks to qualified microbusinesses are guaranteed.~~
- ~~(a) tThe guarantee agreement between the financial institution bank and the MBDC must be approved by the department, prior to the placement of development loan proceeds in a guarantee fund;~~
- ~~(b) the MBDC must provide the department with a first lien against receivables of the MBDC generated by assignment by the financial institution to the MBDC, or purchase from the financial institution by the MBDC, of microbusiness loans;~~
- ~~(c) the MBDC must provide the department with no less than a second lien against the guarantee fund established with development loan proceeds.~~

AUTH: 17-6-406, MCA

IMP: 17-6-406, MCA

REASON: It is necessary for the department to amend ARM 8.99.505 in order to clarify the requirements and processes relative to the statutorily required MBDC matching loan funds and to maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA. In addition, the

sections of ARM 8.99.505 that conflicted with the proposed amendments to ARM 8.99.401 and 8.99.504 are stricken.

8.99.509 ADMINISTRATIVE ACCOUNT ~~(1) The microbusiness administrative account into which interest from development loans and other program income is deposited may accumulate an operating reserve equivalent to 12 months of program administrative expenses.~~

~~(2)~~ (1) Money in the department's administrative account may be transferred to the development loan account or be used to pay the costs of the program, as per 17-6-407, MCA.

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.509 in order to clarify the requirements and processes relative to the department's administrative account. In addition, the MBDCs have strongly encouraged the department to maintain a relatively consistent development loan interest rate. This amendment will allow the department to increase its budget time horizon to support this request.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) Microbusiness loan applicants will be required to certify to the MBDCs, that the applicants are eligible borrowers as defined in 17-6-403 and 17-6-407~~(5) and (6)~~, MCA.

(2) remains the same.

(3) ~~The dollar value of all microbusiness loans having repayment terms of more than five years may not exceed 15% of the total dollar value of all microbusiness loans made by an MBDC.~~ repayment term of any individual microbusiness loan receivable in the revolving loan fund shall not exceed eight years.

(4) remains the same.

(5) A single loan to a microbusiness shall not exceed \$100,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one principal of the microbusiness holds more than a 20 percent equity share shall not exceed \$100,000.

(6) Development loan funds may not be used to refinance a delinquent or nonperforming loan or a portion of a delinquent or nonperforming loan held by a bank, financing company, or the MBDC. Any delinquent debt by the microbusiness loan applicant or any of its principals shall cause the applicant to be ineligible to receive a loan from development loan funds. Development loan funds may not be used to satisfy any delinquency.

(7) Eligible uses of the cash proceeds of a microbusiness loan by a microbusiness include:

(a) business and industrial acquisitions;

(b) business construction, conversion, enlargement, repair, modernization, or development;

- and (c) purchase of equipment, leasehold improvements, machinery, or supplies;
(d) start-up operating costs and working capital.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.511 in order to clarify the relevant statutes and the requirements and processes relative to the eligibility and the terms and conditions of microbusiness loans. It should be noted that the MBDCs have strongly encouraged the department to amend ARM 8.99.511 to allow for longer microbusiness loan repayment terms. The amendment is also necessary to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Quinn Ness, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2758; fax (406) 841-2731; or e-mail quness@mt.gov, and must be received no later than 5:00 p.m., December 7, 2007.

5. Marty Tuttle, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State October 29, 2007.